



June 10, 2024

**BY E-MAIL DELIVERY**

Attn: Robert M. Knop, Assistant General Counsel for Policy  
Federal Election Commission  
1050 First Street NE  
Washington, DC 20463

**Re: REG 2024-01; Use of Campaign Funds for Candidate and Officeholder Security**

Dear Mr. Knop:

We submit the following comment on behalf of DSCC and DCCC (the “*Parties*”) regarding the Federal Election Commission’s (the “*Commission*’s”) Notice of Proposed Rulemaking 2024-01 on the use of campaign funds for candidate and officeholder security (the “*Proposed Rule*”). As the Commission has recognized in several advisory opinions, officeholders regularly face threats and dangers due to their status as such. These threats and dangers also extend to candidates and the families and staff of candidates and officeholders. Protecting candidates, officeholders, and members of their families and staff is essential to a functioning democracy and to encourage public service.

The Parties are grateful to the Commission for the effort to create regulations that will protect the security of candidates and officeholders and members of their families and staff while balancing the need to protect against the personal use of campaign funds.

The Parties are uniquely situated to opine on the proposed rulemaking. Every election cycle, they work closely with candidates, officeholders, and their staff. Through that work, the Parties have borne witness to the unfortunate change in the atmosphere in American politics that has resulted in very real and regular threats to candidates, officeholders, and members of their families and staff. These threats are often scary, overwhelming, and disturbing and have increased in volume and tenor over recent years. When the Parties work directly to help recruit the next generation of civic leaders, they do not take lightly the ask they are making of these candidates and officeholders to put themselves into the public arena, often at the risk to their own personal safety and that of their family and staff.

All too frequently, our public servants’ lives and those of their staff and families are stake. The threat is real: officeholders have been shot and injured.<sup>1</sup> In 2023 alone, there were 8,008 threats

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<sup>1</sup> Karina Bland, *As survivors, they drew sympathy. Becoming activists was a risk they had to take*, USA TODAY (Jan. 7, 2021), <https://www.usatoday.com/in-depth/news/politics/2021/01/07/gabrielle-giffords-shooting-tucson-arizona->

against Members of Congress,<sup>2</sup> with individuals sending such threatening messages as “You stand toe to toe with me, I rip your head off. You die,” “I WANT, SO MUCH, TO [...] PULL THE TRIGGER AND WATCH THEIR HEADS EXPLODE LIKE WATERMELLONS [sic] DROPPED FROM A 3-STORY BUILDING,” and “we’re going to kill you, chop you up into little pieces...”<sup>3</sup> Federal candidates also regularly receive threats.<sup>4</sup> The United States Capitol Police recently announced that they needed to hire attorneys to investigate threats made to lawmakers, which they expect to increase with the upcoming election.<sup>5</sup> And, just last month, a man pled guilty to threatening to kill a Congressional staff member and to making 12,000 harassing phone calls to Members of Congress.<sup>6</sup>

The need to help protect those who step up to run for office and our current public servants, as well as their families and staff, when they are faced with threats is crucial to ensuring the American public does not lose out on talented candidates and public servants. Given the heightened threat environment in which candidates and officeholders now operate, it is imperative that the Commission provide clear guidance so candidates and officeholders can protect themselves, and members of their families and staff.

## **I. General Comments on the Proposed Rule**

The Parties strongly believe the Proposed Rule is necessary to provide candidates and officeholders clarity on how campaign funds may be permissibly spent on security measures. The Commission must provide guidance to make clear that individuals trying to serve our country can take the measures necessary to protect themselves, and their families and staff. The Commission should acknowledge that both federal candidates and federal officeholders may need to use campaign funds for security measures. Candidates face threats and dangers, and the Parties have seen how regular such activity has become. Usually, these dangers and threats begin after candidates have declared their candidacy and started campaigning. However, for some candidates who may have been receiving threats before they have thrown their hats in the ring because they were public figures before seeking office, the threats accelerate and/or worsen when they decide to run for federal public office or expenses arise in connection with those threats, due to travel or other factors, that did not exist prior to candidacy. Federal candidates

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[who-was-shot/6588526002/](https://www.nytimes.com/2017/06/14/us/steve-scalise-congress-shot-alexandria-virginia.html); Michael D. Shear, Adam Goldman & Emily Cochrane, *Congressman Steve Scalise Gravely Wounded in Alexandria Baseball Field Ambush*, N.Y. TIMES (June 14, 2017), <https://www.nytimes.com/2017/06/14/us/steve-scalise-congress-shot-alexandria-virginia.html>.

<sup>2</sup> USCP Threat Assessment Cases for 2023, United States Capitol Police (Jan. 18, 2024), <https://www.uscp.gov/media-center/press-releases/uscp-threat-assessment-cases-2023>.

<sup>3</sup> Rob Kuznia et. al, *A deluge of violent messages: How a surge in threats to public officials could disrupt American democracy*, CNN (Dec. 7, 2023), <https://www.cnn.com/2023/12/07/politics/threats-us-public-officials-democracy-invs/index.html>.

<sup>4</sup> See e.g., Pete Williams, *New York man pleads guilty to threatening Sen. Raphael Warnock*, NBC NEWS (Aug. 16, 2021), <https://www.nbcnews.com/politics/justice-department/new-york-man-pleads-guilty-threatening-raphael-warnock-n1276919>.

<sup>5</sup> Luke Broadwater & Catie Edmondson, *Capitol Police Hire Special Prosecutors to Handle Rise in Threats Against Congress*, N.Y. TIMES (Apr. 9, 2024), <https://www.nytimes.com/2024/04/09/us/capitol-police-special-prosecutors-threats-against-congress.html>.

<sup>6</sup> Defendant Pleads Guilty to Threatening a Congressional Staff Member and Making 12,000 Harassing Telephone Calls to Members of Congress, Department of Justice (May 30, 2023), <https://www.justice.gov/usao-dc/pr/defendant-pleads-guilty-threatening-congressional-staff-member-and-making-12000>.

should not be limited in their ability to use campaign funds for security expenses simply because they are not yet elected. Allowing candidates to respond to threats in the same way as officeholders is also consistent with the definition of personal use, which for both candidates and officeholders is based on a “commitment, obligation or expense of a person that would exist irrespective of the candidate’s election campaign.”<sup>7</sup> Further, the law separately recognizes that officeholders may have different expenses that arise because of their duties as such.<sup>8</sup>

The Proposed Rule currently focuses on whether the *danger or threat* exists irrespective of the individual’s status or duties as a federal candidate or federal officeholder. But, that is not the test under the law. Under the law, the test is whether a specific *use of campaign funds* is being used “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign.” The final regulation should similarly focus on whether the *expense* for security measures to address dangers or threats is an expense that is being incurred irrespective of the individual’s status or duties as a candidate or officeholder.

The Parties agree with the Commission that disbursements for security measures should be for the usual and normal charge for such goods or services. “Reasonable costs” is a fair standard that provides sufficient clarity to the Parties. The reasonableness standard should apply to each type of security measure, rather than the overall amount disbursed on security measures. Moreover, “reasonable costs” should be the reasonable costs associated with a particular market in which the particular expense is being incurred. To further protect against the personal use of campaign funds, the Commission should carry over the language from 11 C.F.R. § 113.1(g)(1)(i)(H) to apply to any use of campaign funds paid to a member of a candidate’s family for security measures. So, for example, the regulation should explain that payments to a member of the candidate’s family are personal use, unless the family member is providing *bona fide* services or goods to the campaign and paying the fair market value for those services or goods.

## **II. Threat Environment Required for the Disbursement of Campaign Funds**

The Parties recommend that the Proposed Rule adopt a threat standard that allows candidates and officeholders to react to ongoing as well as reasonably likely future threats or dangers, or past threats or dangers that may reoccur. The Proposed Rule should not be limited to “ongoing dangers or threats.” A standard based on a “direct” or “specific” threat could lead to situations where harm to candidates and officeholders could have been prevented. Further, the rule should address the fact that some security needs may have existed pre-candidacy but once an individual becomes a federal candidate or federal officeholder, those security needs may increase. As such, the final regulation should read as follows:

The use of campaign funds to pay for the reasonable costs of security measures for a federal candidate, federal officeholder, or a member of a candidate’s family or officeholder’s family or staff is not personal use, so long as the expenses:

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<sup>7</sup> See 52 U.S.C. § 30114(a)(2); 11 C.F.R. § 113.1(g).

<sup>8</sup> See 52 U.S.C. § 30114(a)(2) (noting that it is personal use of campaign funds if campaign funds are used to “fulfill any commitment, obligation or expense of any person that would exist irrespective of the...individual’s duties as a holder of Federal office”); 11 C.F.R. § 113.1(g).

(A) are due to the threat environment faced by a federal candidate, federal officeholder, and/or a member of their family or staff and/or are to address ongoing threats or dangers, or reasonably likely future threats or dangers or past threats or dangers that are reasonably likely to reoccur against a federal candidate, federal officeholder, and/or their family and staff; and

(B) would not exist irrespective the individual's status or duties as a federal candidate or federal officeholder.

Candidates and officeholders should not be required to seek recommendations from law enforcement nor a professional security firm prior to using campaign funds to address security threats. One option the Commission should consider is adopting a safe-harbor provision. Under this idea, the regulation could explain that it would not be personal use of campaign funds if those funds are used for a security measure that is based upon the recommendation of law enforcement or a professional security firm, assuming the use of those funds otherwise complies with the law and regulations. If a candidate or officeholder receives a recommendation that otherwise complies with law and regulations, it is reasonable to presume that using campaign funds for that expense is not an impermissible use of campaign funds because those expenses would not exist "irrespective of the candidate's campaign or duties as a Federal officeholder."

The Commission should also explicitly acknowledge that even if campaign funds *may* be used for security expenses, campaigns are not *required* to pay for security measures for a candidate, officeholder, or their families, especially concerning residential security at a candidate's or officeholder's home; candidates, officeholders, or their family members can also pay for these expenses. For example, a candidate or officeholder who installs a home security camera, a smart doorbell, or other security measures at their residence because of the threat environment is not required by current law or the Proposed Rule to use campaign funds to pay for those measures or report the expenses on their Commission filings.

### **III. Using Campaign Funds on Security Measures for Staff and Families**

The Parties wish to underscore that staff and family members of candidates and officeholders also face threats due to their connection to candidates and officeholders. The Parties strongly recommend the Proposed Rule extends to staff and family members of candidates and officeholders who also face security threats. Staff and family members expenses for security measures would not exist irrespective of the candidates' and officeholders' statuses as candidates and officeholders. The regulation should not differentiate between family members who live with the candidate or officeholder and those who do not. The family member should be able to use campaign funds for expenses for security measures that would not exist irrespective of the candidates' and officeholders' statuses as candidates and officeholders, regardless of whether the family member lives with the candidate or officeholder.

Additionally, it is inevitable that any individual who lives with a candidate or officeholder may benefit from security measures taken to protect a candidate or officeholder's home. But, those benefits should not be limited to incidental ones.

Thus, the regulation should include the family and staff of federal candidates and federal officeholders as described above.

#### IV. Examples of Security Measures

The Parties agree that the Commission should provide a non-exhaustive list of the different types of security measures to recognize that technology changes. The rule should acknowledge that if the intent of the expenditure is for security, an expense does not otherwise become personal use of campaign funds if there are other benefits that result from the expense such as privacy. For example, the Commission recognizes a door can be a structural security measure. However, a door provides both security and privacy. Additionally, the Commission recognizes a fence can be a structural security measure. A fence may provide security, privacy, and also happen to improve property value even if the purpose of installing the fence was security.

The Commission should move the word “solely” under subsection (ii) to later in the clause to reflect that as long as the intent is security and not *solely* for other impermissible purposes, the expense is not personal use. Thus, subsection (ii) of the Proposed Rule should be revised to say, “Structural security devices, such as wiring, lighting, gates, doors, and fencing, so long as such measures are intended to provide security and not *solely* to improve the property or increase its value *or provide privacy*.” This standard recognizes that some security devices that provide security may improve a property or increase its value or provide privacy, but if that is not the intended purpose of the expense, it is not personal use of campaign funds for a candidate or officeholder to use them for it. This language will provide the clarity federal candidates and officeholders need to be able to prepare and protect themselves, their families, and their staff.

The Parties agree with the Commission that campaign funds may be used on professional security personnel, including for staff or family members, if the expenses for security measures are due to the threat environment and/or are to address ongoing threats or dangers, or reasonably likely future threats or dangers or past threats or dangers that are reasonably likely to reoccur and would not otherwise exist irrespective of the candidates’ and officeholders’ statuses as candidates and officeholders. The final regulation should not limit professional security personnel to situations when federal agents are not protecting an officeholder, nor should it limit the use of professional security personnel to situations when the candidate or officeholder is actively campaigning. The danger and threats to candidates and officeholders, or their families and staff is not limited to when the candidate or officeholder are engaged in campaign activity or official business. The rule should not similarly be limited to those instances.

The Parties support the Commission’s efforts to amend its regulations on the use of campaign funds to pay for security measures for federal candidates and officeholders.

Sincerely,



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Emma R. Anspach  
*Counsel to DSCC and DCCC*